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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,070

09/21/2005

Shigeki Kawarabata

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07/17/2008

HAMRE, SCHUMANN, MUELLER & LARSON, P.C.

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MINNEAPOLIS, MN 55402-0902

EXAMINER

KURTZ, BENJAMIN M

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

07/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,070	<b>Applicant(s)</b> KAWARABATA ET AL.	
	<b>Examiner</b> BENJAMIN KURTZ	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/07, 12/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I claims 1-13 in the reply filed on 6/9/08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Specification***

2. The abstract of the disclosure is objected to because it exceeds 150 words in length. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what structure applicant is claiming for the filter. A filter will be formed of a filter member that filters some substance from a fluid. For examination purposes a filter member is assumed to be any filter material capable of filtering a foreign substance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**4. Claims 1 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Haworth et al. US 5 651 765 or Peterson et al. US 5 782 791.**

Claim 1, Haworth and Peterson teach a blood filter device comprising: a housing (12, 14, 16) comprising a dome portion (12) forming an upper part of the housing, a filter retaining portion (14) forming a middle part of the housing, and a bottom portion (16) forming a lower part of the housing, an inlet (22) provided on a lateral portion of the dome portion allowing blood to flow horizontally along an inner wall of the dome portion, an air vent (28) provided at a top of the dome portion, a filter (20) disposed in the filter retaining portion, and an outlet (26) provided in the bottom portion, the filter is formed of a sheet like filter member that is pleated with enveloping surfaces connecting top ends of the pleats being flat so that the filter as a whole has a pleat shaped outer shape and the filter is arranged to partition a cavity of the housing into a dome portion side and a bottom portion side (fig. 2,3).

Claims 10-13, Haworth and Peterson further teach the filter is formed only of a filter member having a function of filtering the foreign substance (Haworth, col. 4, lines 29-31; Peterson, col. 5, lines 1-2); the filter retaining portion has a cylindrical cavity whose cross section taken in a horizontal direction is circular (fig. 4, 5); an outer peripheral length of an internal space of the dome portion is reduced toward the tope of the dome portion (fig. 3); and an inner surface of the bottom portion has no recess or protrusion (fig. 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haworth '765 or Peterson '791 in view of Graus US 6 143 174.**

Claim 2, Haworth and Peterson teach the blood filter of claim 1 where any manner of support which results in stabilizing the annular pleats may be used but does not teach a space between an inner side wall of the filter retaining portion and an outer peripheral portion of the filter is filled with a resin. Graus teaches a housing with an upper part, filter retaining part and lower part with a filter disposed in the filter retaining

portion with a space between an inner side of the filter retaining portion and an outer peripheral portion of the filter is filled with a resin so to be sealed, and the filter is fixed to the inner side wall of the filter retaining portion with the resin (fig. 1, col. 3, lines 44-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the support structure as taught by Graus as the support in Haworth or Peterson because all the components of the filtration unit are joined fluid tight to one another by the sealing compound in a single integral bond (col. 1, lines 50-55).

**6. Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haworth '765 or Peterson '791.**

Claims 3-9 recite relative dimensions of the filter apparatus. Haworth and Peterson do not teach specific dimensions of the apparatus. [W]here the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device, *Gardner v. TEC Systems, Inc.*, 220 USPQ 777 (1984).

Haworth and Peterson also teach the general conditions of the claimed apparatus. It would have been obvious to one of ordinary skill in the art at the time of the invention to optimize the dimensions of the filter apparatus to achieve the desired filtering capabilities. [W]here the general conditions of a claim are disclosed in the prior

art, it is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller, 105 USPQ 233 (1955).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN KURTZ whose telephone number is (571)272-8211. The examiner can normally be reached on Monday through Friday 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin Kurtz  
Examiner  
Art Unit 1797

Application/Control Number: 10/550,070  
Art Unit: 1797

Page 7

/BK/ 7/15/08

/Krishnan S Menon/  
Primary Examiner, Art Unit 1797